Affd — 1558 Davis dissente — — Dec 7. 72.

Judge Davis

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~387.~~ ~~179~~ 25

JOSEPH H. MADDOX, BENJ. F. CAMP, D. PRESTON PARR,
APPELLANTS,

VS.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 12, 1870.

Dec. 7, 1872

SUPREME COURT OF THE UNITED STATES.

No. 387.

JOSEPH H. MADDOX, BENJ. F. CAMP, D. PRESTON PARR,
APPELLANTS,

VS.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims. December term, 1868.

JOSEPH H. MADDOX, BENJAMIN F. CAMP,
D. Preston Parr
vs.
THE UNITED STATES.
} No. 5971.

To the honorable the judges of the Court of Claims of the United States:

The petition of Joseph H. Maddox, Benjamin F. Camp, and D. Preston Parr, citizens of the United States, respectfully represents:

That, after the passage of the act of Congress entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," approved July 2, A. D. 1864, to wit, on the 13th day of November, A. D. 1864, one H. A. Risley, who had, before then, been duly appointed and authorized by the Secretary of the Treasury of the United States, with the approval of the President
of the United States, an agent to purchase for the United States
2 products of States before then declared in insurrection, under
and in pursuance of said act, made and entered into a certain arrangement with your petitioners for the purchase, by said Risley, on behalf of the United States, of a certain amount of tobacco from your petitioners which it was understood and expected that your petitioners would purchase in or about the city of Richmond, in the State of Virginia; and thereupon the said Risley made, executed, and delivered to your petitioners a certain instrument in writing, a copy of which is as follows:

"Memorandum of agreement made November 13, 1864, between H. A. Risley, agent authorized to purchase for the United States products of States declared in insurrection, of one part, and Benjamin F. Camp, J. Maddox, and D. P. Parr, of the other part.

"The said Camp, Maddox, and Parr agree to sell to said Risley, agent as aforesaid, and to deliver to him at Norfolk, or New York, six thousand boxes of tobacco, three hundred and forty barrels of turpentine, and seven hundred barrels of rosin, to be transported by way of the Cone and Potomac rivers; and the said Risley, agent as aforesaid, agrees to purchase the same on the following terms and conditions:

"The said products to be sold in New York or Baltimore, by or under the direction of said Risley, under the same conditions as other sales of like public property are made; all expenses, costs, and charges connected with the purchase, storage, transportation, and sale of the same, together with the internal revenue tax and permit-fees prescribed by regulations, to be first paid, and the net proceeds, over and above such expenses, costs, charges, taxes, and fees, to be disposed of as follows: One-fourth part thereof to be retained by the United States, and three-fourths to be paid to the said Camp, Maddox, and Parr, or their legal representatives.

"And it is further agreed between the parties that all products transported under this contract shall be consigned to said Risley, agent as aforesaid, and shipped on a Government transport, or, if not so shipped,
shall be in immediate charge of an agent to be appointed by said
3 Risley, whose compensation and expenses shall be paid by said
Camp, Maddox, and Parr.

"Nothing in this contract contained shall be construed as incurring any liability on behalf of the United States.

"H. A. RISLEY,
"*Supervising Special Agent Treasury Department,*
"*Authorized to Purchase Products, &c.*
"BENJ. F. CAMP."

And the said Risley, on the said day and year last aforesaid, also made, executed, and delivered to your petitioners a certain other instrument in writing, a copy of which is as follows:

"NOVEMBER 13, 1864.

"I, Hanson A. Risley, agent for the purchase of products of insurrectionary States, on behalf of the Government of the United States, at Norfolk, Virginia, do hereby certify that I have agreed to purchase from B. F. Camp, J. Maddox, and D. P. Parr six thousand boxes of tobacco, three hundred and forty barrels of turpentine, and seven hundred barrels of rosin, situated in the State' of Virginia and North Carolina, which products, it is represented, are or will be at points on or within the national military lines in said States, on or before the first day of March, 1865, and which he stipulates shall be delivered to me unless he is prevented from so doing by the authority of the United States.

"I therefore request safe conduct for the said Camp, Maddox, and Parr, their agents, and means of transportation, and said products forwarded by way of the Cone and Potomac rivers, within the lines of military occupation by the United States forces in said States of Virginia and North Carolina, (without violating blockade,) to Norfolk, Virginia, where the products so transported are to be sold and delivered to me under the stipulation referred to above, and pursuant to regulations prescribed by the Secretary of the Treasury.

"H. A. RISLEY,
"*Sup. Special A'gt, Tr. Dep't,*
"*Authorized to Purchase Products, &c., &c.*"

4 Your petitioners further show that the said instrument in writing last above set forth was afterwards, to wit, on the 17th day of November, A. D. 1864, endorsed in writing by the President of the United States, as follows, viz:

"EXECUTIVE MANSION, *November* 17, 1864.

"An authorized agent of the Treasury Department having, with the approval of the Secretary of the Treasury, contracted for the products above mentioned, and the parties having agreed to sell and deliver the same to such agent:

"It is ordered that products moving in compliance with and for fulfillment of said contract, and being transported to said agent or under his direction, shall be free from seizure or detention by any officer of the Government; and commandants of military departments, districts, posts, and detachments, naval stations, gunboats, flotillas, and fleets will observe this order, and give the said B. F. Camp, J. Maddox, and D. P. Parr, their agents and transports, free, unmolested passage, for the purpose of getting said products, or any part thereof, through the lines, and safe conduct within our lines, excepting blockaded line, while the same are moving within strict compliance with regulations of the

Secretary of the Treasury, and for fulfillment of said contract with the agent of the Government.

"ABRAHAM LINCOLN."

And that said instrument in writing, with said endorsement thereon by the President of the United States, was, by said President, redelivered to your petitioners for the uses and purposes therein mentioned, on the said 17th day of November, A. D. 1864, or about that time.

That, thereupon, and in the months of January and February, A. D. 1865, under and in pursuance of said contract and permits, and for the purpose of complying with and fulfilling the same, your petitioners purchased at Richmond, Virginia, four thousand and forty-two boxes of tobacco, said boxes averaging one hundred and four pounds
5 of tobacco each, and being the amount, in all, of four hundred
and twenty-one thousand one hundred and five pounds of tobacco, which was then and there of the value of one dollar and fifty cents per pound; and caused the same to be delivered to your petitioners at said Richmond, ready to be transported according to said contract and permits, to comply with and fulfill the same.

Your petitioners further state that, afterwards, in accordance with said contract and permits, and for the purpose of complying with said contract, and fulfilling the same, your petitioners caused twenty-seven hundred and fifty-five boxes thereof (2,755) to be delivered at the depot of the Richmond, Fredericksburg, and Potomac Railroad Company, in said Richmond, to be transported to Fredericksburg, thence to Norfolk, Virginia, by the Cone and Potomac rivers; that, of these, two thousand and twenty-nine boxes were started from said Richmond on the railroad of said railroad company for Hamilton's Crossings, about five miles from Fredericksburg; twelve hundred and seventy-three boxes of which reached said Hamilton's Crossings, and that five hundred and thirty boxes thereof were hauled from said Crossings to Fredericksburg, and stored in warehouse at that place, to be thence transported to said Norfolk, as aforesaid; and that seven hundred and forty-three boxes thereof, at Hamilton's Crossings, were burned and destroyed by the military forces of the United States, by order of General Roberts, on the 6th day of March, A. D. 1865, or about that time; that seven hundred and fifty-six boxes of said tobacco were on the railroad, being transported and carried from Richmond to said Hamilton's Crossings, when the agents of said railroad company learned that the military forces of the United States had destroyed said tobacco at said crossings, as hereinbefore stated. And thereupon said agents carried back said seven
6 hundred and fifty-six boxes of tobacco to said Richmond, and de-
posited the same in the depot of said company at said Richmond, where the same remained, together with seven hundred and twenty-six other boxes of said tobacco, originally delivered at the depot as aforesaid, until the capture of said Richmond by the Army of the United States, on or about the 3d day of April, 1865, when the same, being fourteen hundred and eighty-two boxes of said tobacco, was taken by the military forces of the United States, and converted to the use of the United States; that after the said capture of said Richmond, three hundred and twenty-eight other boxes of said tobacco, purchased by your petitioners as aforesaid, were taken by the military forces of the United States from the Childrey's warehouse, so called, where your petitioners had stored the same for the purpose aforesaid, and converted to the use of the United States; and that nine hundred and fifty-nine other boxes of said tobacco were stored in various warehouses in Richmond by your

petitioners, to be transported as aforesaid, and were destroyed in the fires in said town incident to the capture of said Richmond.

Your petitioners further state that the five hundred and thirty boxes of said tobacco, which reached Fredericksburg, were immediately thereafter taken possession of by the military forces of the United States, and converted to the use of the United States.

Your petitioners further show that in all things done by them as
aforesaid, in the purchase of said tobacco and in the storing and trans-
portation thereof, as hereinbefore stated, they acting in conformity with
said contract and permits, and endeavoring in good faith to comply
with and to fulfill said contract; and that they were prevented from
delivering all of said four thousand and forty-two boxes of said to-
7 bacco to said Risley, under said contract, and in part performance
thereof, by the conduct of said military forces of the United States, as before stated, which conduct was in violation of the rights of your petitioners under said contract and said permits, and the act of Congress hereinbefore mentioned; and that but for said conduct of said military forces, all of said four thousand and forty-two boxes of said tobacco would have been sold and delivered by your petitioners to said Risley, under and in part performance of said contract; but that after the seizure and destruction of the tobacco, as hereinbefore stated, it was impossible for your petitioners to perform said contract, or to transport from Richmond the remaining portion of said four thousand and forty-two boxes.

Your petitioners claim that, by reason of the premises, the United States became liable, as for breach of contract, to pay to your petitioners the full value of said tobacco taken and destroyed by said military forces; and also that which, in consequence of the conduct of said forces, was kept in Richmond until it was there destroyed by fire hereinbefore stated; and that your petitioners ought to have a judgment against the United States for the value of said four thousand and forty-two boxes of said tobacco, together with interest on that amount since the 6th day of March, A. D. 1865.

Your petitioners further represent that they have made application to the War Department for the allowance and payment of their said claim, but that said Department has refused to allow and pay the same, or any part thereof; that your petitioners are citizens of the United States and have at all times borne true allegiance to the Government of the United States; and that they have not, in any way, voluntarily aided, abetted,
or given encourgement to rebellion against the said Government,

8 That petitioners, Parr and Camp, never actively participated in
the said transactions, but all of the means were furnished by said Maddox, and all the business was done by him.

And said petitioners, Camp and Parr, have since transferred to said Maddox all their interest in the damages which have accrued under said contract, and have agreed that said Maddox may sue for the same to his own use, using their names therefor, and this action is brought for his use.

That said Maddox has assigned to one B. W. Spears an interest of twenty per cent. in the amount to be recovered in said claim, and thirty-five thousand eight hundred dollars ($35,800) in addition thereto, upon condition that said Spears should advance certain large sums of money to said Maddox, for his use, from time to time.

Wherefore your petitioners pray judgment against the United States for the sum of six hundred and thirty-one thousand six hundred and fifty-seven dollars and fifty cents, with interest on that sum since March 6, 1865.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Joseph H. Maddox, being duly sworn, deposeth that he is one of the claimants in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition is stated; that claimants are justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

J. H. MADDOX.

9 Sworn and subscribed to before me, assistant clerk Court of Claims, in said District of Columbia and county of Washington.

Witness my hand and seal of this court this 19th day of October, A. D. 1869.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Claimants' address is Baltimore, Md.

Claimant's solicitors, Hughes, Denver & Peck, 274 Pennsylvania avenue, Washington, D. C.

United States Court of Claims. December term, 1868.

No. 5971. Filed October 19, 1869, J. Randolph, ass't clerk. Joseph H. Maddox, Benjamin F. Camp, D. Preston Parr, vs. The United States. Amended petition. Filed Jan. 12, 1870. Hughes. Denver, & Peck, solicitors for claimants.

10 United States Court of Claims. December term, 1868.

JOSEPH H. MADDOX, BENJAMIN F. CAMP, D. Preston Parr
vs.
THE UNITED STATES.
} No. 5971.

To the honorable the judges of the Court of Claims of the United States:

The petition of Joseph H. Maddox, Benjamin F. Camp, and D. Preston Parr, citizens of the United States, respectfully represents:

That, after the passage of the act of Congress, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," approved July 2d, A. D. 1864, to wit, on the 13th day of November, A. D. 1864, one H. A. Risley, who had before then been duly appointed and authorized by the Secretary of the Treasury of the United States, with the approval of the President of the United States, an agent to purchase for the United States products of States before then declared in insurrection, under and in pursuance of said act, made and entered into a certain arrangement 11 with your petitioners, for the purchase by said Risley, on behalf of the United States, of a certain amount of tobacco from your petitioners, which it was understood and expected that your petitioners would purchase in or about the city of Richmond, in the State of Virginia;

and thereupon, the said Risley made, executed, and delivered to your petitioners, a certain instrument in writing, a copy of which is as follows:

"Memorandum of agreement made November 13th, 1864, between H. A. Risley, agent authorized to purchase for the United States, products of States declared in insurrection, of one part, and Benjamin F. Camp, J. H. Maddox, and D. P. Parr, of the other part.

"The said Camp, Maddox, and Parr agree to sell to said Risley, agent as aforesaid, and to deliver to him at Norfolk, or New York, six thousand boxes of tobacco, three hundred and forty barrels of turpentine, and seven hundred barrels of rosin, to be transported by the way of the Cone and Potomac rivers, and the said Risley, agent as aforesaid, agrees to purchase the same on the following terms and conditions:

"The said products to be sold in New York or Baltimore, by or under the direction of said Risley, under the same conditions as other sales of like public property are made; all expenses, costs, and charges, connected with the purchase, storage, transportation, and sale of the same, together with the internal revenue tax and permit-fees prescribed by regulations, to be first paid, and the net proceeds, over and above such expenses, costs, charges, taxes, and fees, to be disposed of as follows: One-fourth part thereof to be retained by the United States, and three-fourths to be paid to the said Camp, Maddox, and Parr, or their legal representatives.

"And it is further agreed between the parties, that all products transported under this contract, shall be consigned to said Risley, agent as aforesaid, and shipped on a Government transport, or, if not so shipped, shall be in immediate charge of an agent to be ap-
12 pointed by said Risley, whose compensation and expenses shall be paid by said Camp, Maddox, and Parr.

"Nothing in this contract contained shall be construed as incurring any liability on behalf of the United States.

"H. A. RISLEY,
"*Supervising Special Agent Treasury Department,*
"*Authorized to purchase Products, &c.*
"BENJ. F. CAMP."

And the said Risley, on the said day and year last aforesaid, also made, executed, and delivered to your petitioners, a certain other instrument in writing, a copy of which is as follows:

"NOVEMBER 13TH, 1864.

"I, Hanson A. Risley, agent for the purchase of products of insurrectionary States, on behalf of the Government of the United States, at Norfolk, Virginia, do hereby certify, that I have agreed to purchase from B. F. Camp, J. H. Maddox, and D. P. Parr, six thousand boxes of tabacco, three hundred and forty barrels of turpentine, and seven hundred barrels of rosin, situated in the States of Virginia and North Carolina, which products, it is represented are or will be at points, on or within the national military lines in said State, on or before the first day of March, 1865, and which he stipulates shall be delivered to me, unless he is prevented from so doing by the authority of the United States.

"I, therefore request safe conduct for the said Camp, Maddox, and Parr, their agents, and means of transportation, and said products forwarded by way of the Cone and Potomac rivers, within the lines of military occupation by the United States forces, in said States of Virginia and North Carolina, (without violating blockade,) to Norfolk, Virginia, where the products so transported, are to be sold and delivered to me under the stipulation referred to above, and pursuant to regulations prescribed by the Secretary of the Treasury.

"H. A. RISLEY,
"*Sup. Special Ag't Treasury Dep't*
Authorized to purchase Products, &c."

13 Your petitioners further show that the said instrument of writing last above set forth, was afterwards, to wit, on the 17th day of November, A. D. 1864, endorsed in writing by the President of the United States, as follows, viz:

"EXECUTIVE MANSION,
"*November 17th*, 1864.

"An authorized agent of the Treasury Department, having, with the approval of the Secretary of the Treasury, contracted for the products above mentioned, and the parties having agreed to sell and deliver the same to such agent:

"It is ordered that products moving in compliance with and for fulfillment of said contract, and being transported to said agent or under his direction, shall be free from seizure or detention by any officer of the Government; and commandants of military departments, districts, posts, and detachments, naval stations, gunboats, flotillas, and fleets, will observe this order, and give the said B. F. Camp, J. H. Maddox, and D. P. Parr, their agents and transports, free, unmolested passage, for the purpose of getting said products, or any part thereof, through the lines, and safe conduct within our lines, excepting blockaded line, while the same are moving within strict compliance with regulations of the Secretary of the Treasury, and for fulfillment of said contract with the agent of the Government.

"ABRAHAM LINCOLN."

And, that said instrument in writing, with said endorsement thereon by the President of the United States, was, by said President, redelivered to your petitioners for the uses and purposes therein mentioned, on the said 17th day of November, A. D. 1864, or about that time.

That thereupon, and in the months of January and February, A. D. 1865, under, and in pursuance of said contract and permits, and for the purpose of complying with and fulfilling the same, your petitioners purchased at Richmond, Virginia, four thousand and forty-two boxes
14 of tobacco, said boxes averaging one hundred and four pounds of tobacco each, and being the amount in all of four hundred and twenty-one thousand one hundred and five pounds of tobacco, which was then and there of the value of one dollar and seventy-five cents per pound, and caused the same to be delivered to your petitioners at said Richmond, ready to be transported according to said contract and permits, to comply with and fulfill the same.

Your petitioners further state that, afterwards, in accordance with said contract and permits, and for the purpose of complying with said contract and fulfilling the same, your petitioners caused twenty-seven hundred and fifty-five (2,755) boxes thereof to be delivered at the depot of the Richmond, Frederickburg and Potomac Railroad Company, in said Richmond, to be transported to Fredericksburg, thence to Norfolk, Virginia, by the Cone and Potomac rivers; that of these, two thousand

and twenty-nine boxes were started from said Richmond, on the railroad of said railroad company, for Hamilton's Crossings, about five miles from Fredericksburg, twelve hundred and seventy-three boxes of which reached said Hamilton's Crossings, and that five hundred and thirty boxes thereof, were hauled from said crossings to Fredericksburg and stored in a warehouse at that place, to be thence transported to said Norfolk as aforesaid, and that seven hundred and forty-three boxes thereof at Hamilton's Crossings, were burned and destroyed by the military forces of the United States, by order of General Roberts, on the 6th day of March, A. D. 1865, or about that time. That seven hundred and fifty-six boxes of said tobacco were on the railroad, being transported and carried from Richmond to said Hamilton's Crossings, when the agents of said railroad company learned that the military forces of the United States had destroyed said tobacco at said crossings, as hereinbefore stated; and thereupon said agents carried back said seven hundred and fifty-six boxes of tobacco to said Richmond, and deposited the same in the depot of said company at said Richmond, where the same remained, together with seven hundred and
15 twenty-six other boxes of said tobacco, originally delivered at the
depot as aforesaid, until the capture of said Richmond by the Army of the United States, on or about the 3rd day of April, 1865, when the same, being fourteen hundred and eighty-two boxes of said tobacco, was taken by the military forces of the United States, and converted to the use of the United States. That after the said capture of said Richmond, three hundred and twenty-eight other boxes of said tobacco, purchased by your petitioners as aforesaid, were taken by the military forces of the United States from the Childrey's warehouse, so called, where your petitioners had stored the same for the purpose aforesaid, and converted to the use of the United States; and that nine hundred and fifty-nine other boxes of said tobacco were stored in various warehouses in Richmond by your petitioners, to be transported as aforesaid, and were destroyed in the fires in said town incident to the capture of said Richmond.

Your petitioners further state that the five hundred and thirty boxes of said tobacco which reached Fredericksburg, were immediately thereafter taken possession of by the military forces of the United States and converted to the use of the United States.

Your petitioners further show that, in all things done by them as aforesaid, in the purchase of said tobacco and in the storing and transportation thereof, as hereinbefore stated, they acting in conformity with said contract and permits, and endeavoring in good faith to comply with, and to fulfill said contract; and that they were prevented from delivering all of said four thousand and forty-two boxes of said tobacco to said Risley, under said contract, and in part performance thereof, by the conduct of said military forces of the United States as before stated; which conduct was in violation of the rights of your petitioners under said contract, and said permits, and the act of Congress hereinbefore mentioned; and that but for said conduct of said military forces, all of said four thousand and forty-two boxes of said tobacco would have been sold and delivered by your petitioners to said Risley, under and in part performance of said contract;
16 but that after the seizure and destruction of the tobacco, as
hereinbefore stated, it was impossible for your petitioners to perform said contract, or to transport from Richmond the remaining portion of said four thousand and forty-two boxes.

Your petitioners claim that, by reason of the premises, the United

States became liable, as for breach of contract, to pay to your petitioners the full value of said tobacco, taken and destroyed by the said military forces; and also that which in consequence of the conduct of said forces, was kept in Richmond until it was there destroyed by fire, hereinbefore stated; and that your petitioners ought to have a judgment against the United States for the value of the said four thousand and forty-two boxes of said tobacco, together with interest on that amount since the 6th day of March, A. D. 1865.

Your petitioners further represent that they have made application to the War Department for the allowance and payment of their said claim, but that said Department has refused to allow and pay the same or any part thereof; that your petitioners are citizens of the United States, and have at all times borne true allegiance to the Government of the United States; and that they have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

That petitioners, Parr and Camp, never actively participated in the said transactions, but all of the means were furnished by said Maddox, and all the business was done by him.

And said petitioners, Camp and Parr, have since transferred to said Maddox all their interest in the damages which have accrued under said contract, and have agreed that said Maddox may sue for the same to his own use, using their names therefor, and this action is brought for his use.

That said Maddox has assigned to one Barton W. Spears, of the city of New York, and a citizen of the State of New York, one-fifth of his entire claim aforesaid, and has also assigned to Spears the further sum of thirty-five thousand eight hundred dollars, part of said claim, and that to the extent of the interest so assigned, your petitioners sue for his use.

17 And your petitioner, J. H. Maddox, further shows and states that he has assigned to John L. Crawford, a citizen of the United States, the sum of four hundred thousand dollars, part of said claim, and that, to the extent of the interest so assigned by him to said Crawford of said sum of four hundred thousand dollars, your petitioners sues for the use of said Crawford.

Wherefore your petitioners pray judgment against the United States, for the sum of seven hundred and thirty-five thousand six hundred and forty-four dollars, with interest on that sum since March 6th, 1865.

HUGHES, DENVER & PECK,
Solicitors for Claimants.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Joseph H. Maddox, being duly sworn, deposeth that he is one of the claimants in the foregoing petition; that no assignment, or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in the petition is stated; that claimants are justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

J. H. MADDOX.

Sworn to and subscribed before me John Randolph, ass't clerk Court of Claims.

Witness my hand and the seal of the said court, this 12th day of January, A. D. 1870.

[SEAL.] JOHN RANDOLPH.

Claimants' address is Baltimore, Md.

Claimants solicitors, Hughes, Denver & Peck, 274 Pennsylvania avenue, Washington, D. C.

18 In the Court of Claims of the United States. December term, 1869.

JOSEPH H. MADDOX, BENJAMIN F. CAMP, D. Preston Parr *vs.* THE UNITED STATES. } No. 5971.

And the said defendants, by their Attorney General, say that the petition as amended is not sufficient in law.

THOMAS H. TALBOT,
Assistant Attorney General.

19 In the Court of Claims.

JOSEPH H. MADDOX, BENJAMIN F. CAMP, D. Preston Parr *vs.* THE UNITED STATES. } 5971.

And now, to wit, 18th of April, A. D. 1870, the court, upon due consideration of the premises, find in favor of the *claimant'*, and do order, adjudge, and decree that the said claimants take nothing by their suit, and that their petition be dismissed.

By the court:

A true copy of record.

20 In the Court of Claims. Dec. term, 1869.

JOSEPH H. MADDOX, BENJ. F. CAMP, JOSEPH F. Parr *vs.* THE UNITED STATES. } 5971.

Now come the said claimants, and, in open court, pray the allowance of an appeal from the judgment of this court to the Supreme Court of the United States.

HUGHES, DENVER & PECK,
Solicitors for Claimants.

Filed in clerk's office April 29, 1870.

Ordered that the appeal as prayed in the case of Joseph H. Maddox et al. vs. The United States, 5971, be allowed.

29 April, 1870.

By the court.

21 In the Court of Claims.

JOSEPH H. MADDOX ET AL.
vs. No. 5971.
THE UNITED STATES.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimants for the allowance of an appeal, as filed in the clerk's office 29 April, 1870, allowing the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 387. James H. Maddox, Benjamin F. Camp, D. Preston Parr, appellants, vs. The United States. Court of Claims. Filed 12th December, 1870.

Supreme Court of the United States.

DECEMBER TERM, 1871.

No. 179.

JOSEPH H. MADDOX and others
vs.
THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

Brief on behalf of Appellants.

WASHINGTON, D. C.
W. H. MOORE, PRINTER, 511 ELEVENTH STREET.
1872.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

No. 179.

JOSEPH H. MADDOX AND OTHERS

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

Brief on behalf of Appellants.

The case of the appellants is stated in their petition and amended petition to the Court of Claims.—See Record, pp. 1, 2, 3, and 4.

A demurrer to this claim was sustained by the Court of Claims, and this appeal is prosecuted to reverse that decision.

The Court of Claims had previously, in the case of Lane vs. The United States, held that the Government was liable on contract of this description.—See Nott and Huntington's Reps., vol. 2, p. 184.)

But the Supreme Court reversed that decision.—(United States vs. Lane, 8th Wallace's Reports, p. 185.)

The Court of Claims, in view of the action of the Supreme Court in the case of the United States vs. Lane, sustained the demurrer to the petition in this case.—(See Nott and Huntington's Reps., vol. 5, p. 372.)

The special errors assigned, are the following:

I. The Court of Claims erred in sustaining the demurrer to the petition of the claimants.

II. The case of the United States vs. Lane does not rule this case, because—

I. The facts were different, and *the point resolved* was that carrying an outgoing cargo, was without authority of law or regulations pursuant to law.

II. All comments of the Court made in the Lane case which do apply to this case, are *obiter dicta,* and subject to be reviewed and reconsidered in this case.

JAMES HUGHES,
of Counsel for Appellants.

Supreme Court of the United States,

DECEMBER TERM, 1871.

No. 179.

JOSEPH H. MADDOX

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

Argument of Mr. Hughes for the Appellant.

MAY IT PLEASE THE COURT: The case of the appellant is stated in the printed brief, shortly; and more fully in his petition before the Court of Claims, which is in the record, and to which your honors are referred; but for the purposes of this argument, I will use the short statement in the brief, which is as follows:

The case of the appellants is stated in their petition and amended petition to the Court of Claims.—(See Record, pp. 1, 2, 3, and 4.)

A demurrer to this claim was sustained by the Court of Claims, and this appeal is prosecuted to reverse that decision.

The Court of Claims had previously, in the case of Lane vs. The United States, held that the Government was liable on contract of this description.—(See Nott and Huntington's Reps., vol. 2, p. 184.)

But the Supreme Court reversed that decision.—(United States vs. Lane, 8th Wallace's Reports, p. 185.)

The Court of Claims, in view of the action of the Supreme Court in the case of the United States vs. Lane, sustained the demurrer to the petition in this case.—(See Nott and Huntington's Reps., vol. 5, p. 372.)

The special errors assigned, are the following:

I. The Court of Claims erred in sustaining the demurrer to the petition of the claimants.

II. The case of the United States vs. Lane does not rule this case, because—

I. The facts were different, and *the point resolved* was that carrying an outgoing cargo was without authority of law or regulations pursuant to law.

II. All comments of the Court made in the Lane case which do apply to this case, are *obiter dicta*, and subject to be reviewed and reconsidered in this case.

This is a suit upon an express contract made by the United States under the authority of a certain act of Congress, and regulations made in pursuance thereof.

The act of Congress referred to is of the date of July 2, 1864. (13th Stat. p. 375, and the 8th section of the act which governs this case, in connection with supplementary regulations authorized by the act, is as follows:

"Sec. 8. *And be it further enacted*, That it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, at such places therein as shall be designated by him, at such prices as shall be agreed on with the seller, not exceeding the market value thereof at the place of delivery, nor exceeding three-fourths of the market value thereof in the city of New York at the latest quotations known to the agent purchasing: *Provided*, That no part of the purchase-money for any products so purchased shall be paid or agreed to be paid out of any other fund than that arising from property sold as captured or abandoned, or purchased and sold under the provisions of this act. All property so purchased shall be forwarded for sale at such place or places as shall be designated by the Secretary of the Treasury, and the moneys arising therefrom, after payment of the purchase money and the other expenses connected therewith, shall be paid into the treasury of the United States; and the accounts of all moneys so received and paid shall be rendered to, and audited by, the proper accounting officers of the treasury."

The regulations made by the President and Secretary of the Treasury, pursuant to the authority conferred by the act of Congress just mentioned, are dated September 24, 1864, and are as follows:

GENERAL REGULATIONS

For the purchase of products of the insurrectionary States on Government account.

I. Agents shall be appointed by the Secretary of the Treasury, with the approval of the President, to purchase for the United States, under special instructions from the Secretary of the Treasury, products of States declared to be in insurrection, at places hereinafter designated, or that may, from time to time, be designated as markets or places of purchase.

II. The following places are hereby designated as such markets or places of purchase, to wit: New Orleans, Memphis, Nashville, Norfolk, Beaufort, N. C., Port Royal, and Pensacola.

III. Before entering upon the discharge of their duty, each of the agents so appointed shall execute a bond, with sureties in the prescribed form, in a penal sum to be fixed by the Secretary of the Treasury, conditioned for the faithful discharge of his duty, and that he shall not engage, directly or indirectly, in the purchase of products on private account, nor be, in any way, interested in the products purchased by him, or the proceeds or profits arising therefrom.

IV. The price to be paid for any of the products so to be purchased shall be agreed upon between the seller and the purchasing agent, but shall in no case exceed the market value thereof at the time and place of purchase, nor exceed three-fourths the market value thereof in the city of New York, according to the latest quotations known to the agent purchasing at the date of the delivery of the products, less a sum equal to the internal revenue tax and the permit fee prescribed in the regulations concerning commercial intercourse, dated July 29, 1864, and also subject to such other deductions to cover transportation, insurance and other expenses, and to such arrangements for payment as may be prescribed in special instructions to the several purchasing agents.

V. The proceeds of all sales made by the several agents, together with such funds as may be transmitted by the Secretary of the Treasury, shall be deposited in the most convenient depository, to the credit of the "purchasing fund," to be disbursed as hereinafter directed.

VI. Proper instructions shall be given whereby daily quotations and prices current in New York shall be forwarded to the several agents, and to the collector or surveyor (as the case may be) of customs at the several markets or places of purchase, by mail, every day, or as often as there shall be mail communication with such agents and collectors or surveyors.

VII. The purchasing agent shall, to the extent of the funds at his command, and in pursuance of his instructions from the Secretary of the Treasury as to price and terms of payment, purchase all products offered to him of the character or description which by such instructions he is authorized to purchase; but no liability of any character shall be authorized or assumed by any agent for or on account of Government previous to the actual delivery of the products, other than a stipulation, in the form hereinafter prescribed, to purchase products owned or controlled by applicants, at a price to be agreed upon at the place and date of delivery.

VIII. Whenever any person shall make application to the purchasing agent, in writing, setting forth that he owns or controls products, stating the kind, quantity, and location thereof, or the date at which they will be delivered at some specified location accessible to transportation, the purchasing agent, if authorized by special instructions, to purchase such products, shall give a certificate that such application has been made, and request safe conduct for such party, with the necessary transportation, to the locations specified, and for himself and products in transitu from the points named to such purchasing agent. (See form No. 1, appended to these regulations.)

IX. Parties having sold and delivered products shall, upon their request, be furnished by the purchasing agent with a certificate of the facts, which certificate shall state the character and quantity of the articles purchased, the price paid therefor, the aggregate amount of payment, the place whence and the route by which it was transported. (See form No. 2, appended to these regulations.)

X. All bills or invoices of purchase shall be made in triplicate, after the products purchased shall have been actually delivered to the purchasing agent, their weight, quantity, and rating ascertained and determined by sworn weighers, measurers, or experts; and such bills or invoices shall be certified thereon as to their correctness by such sworn weigher, measurer, or expert, and the whole, as to prices and other stipulations expressed therein, certified by the purchasing agent, together with the date of the latest New York quotations known to the agent at time of the purchase.

The product, with such triplicate bills or invoices, shall then be delivered to the collector or surveyor of customs at the place of delivery, who, on satisfying himself of their correctness, and that the products correspond with the statement set forth in the bills or invoices, shall indorse thereon, over his own signature, a certificate of the facts, which certificate shall authorize payment of the bills to be made by such depositary or other disbursing agent, at such time and in such manner as shall have been agreed upon in writing between the purchasing agent and seller, taking care to authorize payment at a date sufficiently remote to be certain the proceeds therefrom may be realized, and such bills, duly receipted, shall be paid by the depositary or disbursing agent named in the certificate as therein stipulated. One of the triplicates so paid shall be immediately transmitted to the Secretary of the Treasury by the disbursing officer, one retained by him, and the other transmitted to the First Auditor, with his monthly accounts for settlement.

XI. Purchasing agents shall keep a full and accurate record of all their transactions, including the names of all persons from whom they make purchases, the date of the purchase, a description of the products purchased, the quantity thereof, specifying the number and character (whether bundles, boxes, hogsheads, or bales,) of packages, and their weight, if in pounds, or gallons if in liquids, &c., and their quantity, as ascertained and certified to by sworn experts, weighers, &c. A transcript of this record will be transmitted to the Secretary of the Treasury on the first day of each month.

XII. Sales of products so purchased may be made weekly at public auction, to the highest bidder, after due notice, at Memphis and New Orleans, and other places hereafter designated by the Secretary of the Treasury, not exceeding in quantity one-fifth of the amount received during the previous week, unless in the opinion of the purchasing and disbursing agent, and the collector or surveyor, as the case may be, the condition of the purchasing fund shall require larger sales than one-fifth; then sales of such further quantities as they may determine to be necessary are hereby authorized, but in no case in such amounts as unduly to affect the market. Such additional sales and the reason therefor must be promptly reported to the Secretary of the Treasury.

XIII. The sales herein authorized shall be made by or under the direction or supervision of the purchasing agent, or an agent specially authorized by the Secretary, and all products so sold shall be delivered by the collector or surveyor (as the case may be) to the parties purchasing them, upon the presentation to him of the bill of sale, certified by the agent, designating the lot, character, and quantity of the products sold and the price and the amount to be paid therefor, together with a certificate from the depositary that the proceeds of such sale have been duly deposited with him, and the products so sold shall be allowed transportation to any desired port or place in a loyal State, free from the payment of any taxes or fees other than such as have been paid under regulation IV.

XIV. Any person bringing products for sale to the purchasing agent, desiring to repurchase and transport the same to a loyal State, may give notice thereof at the time of making sale to the purchasing agent; and the agent may, after they have been rated, weighed, &c., as provided above, sell and dispose of such products to the party applying at prices not less than the market rates at the place of purchase, nor less than the last quotations from New York known to the purchasing agent at the date of the transaction, from which shall be deducted a sum equal to the reduction of purchase price which may have been made by the agent to cover transportation and other expenses.

The products so sold shall not be resold, either at public or private sale, until after transportation to a loyal State or to a foreign port, and shall be liable to forfeiture for breach of this regulation. All products purchased by purchasing agents, the sale of which is not provided for in these regulations, shall be disposed of in such manner as may be directed by the Secretary of the Treasury.

XV. All products of insurrectionary States which the purchasing agent is authorized by his instructions to purchase, moving with or without a permit, shall, on arrival at a place where there is a purchasing agent, be sold and delivered to him, except captured and abandoned property, and such as may have been produced within the lines of actual occupation by the military forces of the United States by the labor of the person transporting, or of freedmen or others employed and paid by him, pursuant to rules relating thereto established under proper authority; or such as were purchased under proper authority prior to July 2, 1864, and were being transported in conformity with the regulations of the Secretary of the Treasury.

W. P. FESSENDEN,
Secretary of the Treasury.

WASHINGTON, D. C., *September* 24, 1864.

EXECUTIVE MANSION, *September* 24, 1864.

The foregoing rules and regulations of the Secretary of the Treasury, having been seen and considered by me, are hereby approved.

ABRAHAM LINCOLN.

And further, to enforce and give efficacy to the foregoing act of Congress, and regulations thereby authorized, and made pursuant thereto, the following orders were issued:

1st. An executive order made and published by the President. 2d. An order published by the War Department. 3d. An order published by the Navy Department. To wit:

Executive Order relative to the purchase of products of insurrectionary States.

EXECUTIVE MANSION, *September* 24, 1864.

I. Congress having authorized the purchase for the United States of the product of States declared in insurrection, and the Secretary of the Treasury having designated New Orleans, Memphis, Nashville, Pensacola, Port Royal, Beaufort, N. C., and Norfolk, as places of purchase, and, with my approval, appointed agents, and made regulations under which said products may be purchased: Therefore,

II. All persons, except such as may be in the civil, military or naval service of the government, having in their possession any products of States declared in insurrection which said agents are authorized to purchase, and all persons owning or controlling such products therein, are authorized to convey such products to either of the places which have been hereby, or may hereafter be, designated as places of purchase, and such products so destined shall not be liable to detention, seizure, or forfeiture while in transitu or store awaiting transportation.

III. Any person having the certificate of a purchasing agent, as prescribed by Treasury Regulation VIII, is authorized to pass, with the necessary means of transportation, to the points named in said certificate, and to return therefrom with the products required for the fulfilment of the stipulations set forth in said certificate.

IV. Any person having sold and delivered to a purchasing agent any products of an insurrectionary State, in accordance with the regulations in relation thereto, and having in his possession a certificate setting forth the fact of such purchase and sale, the character and quantity of products, and the aggregate amount paid therefor, as prescribed by regulation IX, shall be permitted by the military authority commanding at the place of sale to purchase from any authorized dealer at such place, or any other place in a loyal State, merchandise and other articles not contraband of war, nor prohibited by the order of the War Department, nor coin, bullion, or foreign exchange, to an amount not exceeding in value one-third of the aggregate value of the products sold by him, as certified by the agent purchasing; and the merchandise and other articles so purchased may be transported by the same route and to the same place from and by which the products sold and delivered reached the purchasing agent, as set forth in the certificate; and such merchandise and other articles shall have safe conduct, and shall not be subject to detention, seizure, or forfeiture while being transported to the places and by the route set forth in the said certificate.

V. Generals commanding military districts and commandants of military posts and detachments, and officers commanding fleets, flotillas, and gunboats, will give safe conduct to persons and products, merchandise and other articles duly authorized as aforesaid, and not contraband of war or prohibited by order of the War Department, or the orders of such generals commanding, or other duly authorized military or naval officer, made in pursuance thereof; and all persons hindering or preventing such safe conduct of persons or property will be deemed guilty of a military offence, and punished accordingly.

VI. Any person transporting or attempting to transport any merchandize or other articles, except in pursuance of regulations of the Secretary of the Treasury dated July 29, 1864, or in pursuance of this order, or transporting or attempting to transport any merchandize or other articles contraband of war, or forbidden by any order of the War Department, will be deemed guilty of a military offence, and punished accordingly; and all products of insurrectionary States found in transitu to any other person or place than a purchasing agent and a designated place of purchase, shall be seized and forfeited to the United States, except such as may be moving to a loyal State under duly authorized permits of a proper officer of the Treasury Department, as prescribed by regulation XXXVIII, concerning "commercial intercourse," dated July 29, 1864, or such as may have been found abandoned, or have been captured, and are moving in pursuance of the act of March 12, 1863.

VII. No military or naval officer of the United States, or person in the military or naval service, nor any civil officer, except such as are appointed for that purpose, shall engage in trade or traffic in the products of insurrectionary States, or furnish transportation therefor, under pain of being deemed guilty of unlawful trading with the enemy, and punished accordingly.

VIII. The Secretary of War will make such general orders or regulations as will insure the proper observance and execution of this order; and the Secretary of the Navy will give instructions to officers commanding fleets, flotillas, and gun-boats in conformity therewith.

ABRAHAM LINCOLN.

[General Orders, No. 285.]

War Department,
Washington City, October 6, 1864.

First. The attention of officers and soldiers of the army of the United States, whether volunteer or regular, is directed to the Executive order dated September 24, 1864, and they will in all respects observe the same, and the commanders of all military departments, districts, posts, and detachments will, upon the receipt of this order, revoke all other orders within their respective commands conflicting or inconsistent therewith, and will make such orders as will insure strict observance of this order throughout their respective commands.

Second. All commanders of military departments, districts, posts, and detachments will render such aid to the officers and agents of the Treasury Department in carrying out the provisions of said order, and the Treasury regulations therein referred to, as can be given without prejudice to the military service.

Third. Officers of the Quartermaster's Department, upon written application of the duly authorized agents of the Treasury Department, or of persons authorized by them, may furnish transportation, by land or water, for collecting and forwarding to market articles of produce within the insurrectionary States specified within the aforesaid order, upon such reasonable terms as may be prescribed by the Quartermaster General, where the same can be done without prejudice to the military service, and not otherwise. The application for transportation must be first approved by the commander of the department, district, post, or detachment wherein the articles are received.

By order of the Secretary of War.

E. D. TOWNSEND,
Assistant Adjutant General.

[General Order, No. 42.]

Navy Department,
Washington, December 1, 1864.

The attention of the commanding officers of squadrons, flotillas, and vessels of the navy employed on blockade duty, or in the Mississippi river, or other inland waters in the vicinity of the insurrectionary States, is required to the Executive order hereto annexed, dated September 24, 1864, and they will adopt such measures as may be necessary to insure the strict observance of the order by those under their command.

The forms of certificates referred to in paragraph III and IV of the Executive order are also annexed hereto.

GIDEON WELLES,
Secretary of the Navy.

And further to carry out the provisions of the act of Congress and regulations before mentioned, it is provided in articles eight and nine of said regulations, respectively, that certificates shall be given in a form adopted and prescribed, as follows:

FORM No. 1.

I, A——— B———, agent for the purchase of products of insurrectionary States on behalf of the Government of the United States at ———, do hereby certify that I have agreed to purchase from C——— D———, of ———, ———; which products, it is represented, are or will be, at ———, in the county of ———, in the State of ———, on the ——— day of ———, 186—, and which he stipulates shall be delivered to me, unless prevented from so doing by the authority of the United States.

I therefore request safe conduct for the said C——— D———, and his means of transportation, and said products, from ——— to ———, where the products so transported are to be sold and delivered to me, under the stipulation referred to above, and pursuant to regulations prescribed by the Secretary of the Treasury.

A——— B———.

FORM No. 2.

I, A——— B———, agent for the purchase of products of insurrectionary States on behalf of the Government of the United States at ———, do hereby certify that I have purchased of C——— D———, of ———, ——— of

——— at $——— per ———, and that there has been paid him for the same, $———, and that the said ——— was transported from ——— by way of ———.

A——— B———.

Waiving discussion for the present, as to the force and effect of the Executive order of President Lincoln, and of the orders of the War and Navy Departments respectively, all in aid of the act of Congress and the regulations made to enforce it, I affirm this proposition, viz:

Regulations made in pursuance of a statute, by authority designated therein, are of the same force and effect as if incorporated in the body of the statute, and become a part thereof; and are, together with the law, a rule to the courts, and in this case the contract sued on was in strict conformity with an act of Congress, and regulations made under it; and a sufficient breach is alleged to give the plaintiff (appellant) a right to recover.

On the first branch of the above proposition, I beg to refer the Court to the following authority:

United States *vs.* Mundell, 6 Call's Reports, pp. 254 and 257, from which I make the following extract:

"In the act entitled 'An act to establish the judicial courts of the United States,' passed the first session of the first Congress, there is a provision to this effect:

"Sec. 34. That the laws of the United States, except where the Constitution, Treaties, or Statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply."

The act of the first session of the second Congress, entitled "An act for regulating processes in the courts of the United States," &c., provides:

"Sec. 2. That the forms of writs, executions, and other process, except their style, and the form and modes of proceeding in suits in those of common law, shall be the same as are now used in the said courts respectively, in pursuance of the act, entitled 'An act to regulate processes in the courts of the United States, in those of equity, and in those of admiralty and maritime jurisdiction, according to the principles, rules, and usages, which belong to courts of equity and to courts of admiralty respectively, as contradistinguished from courts of common law, except so far as may have been provided for by the act to establish the judicial courts of the United States, subject, however, to such alterations as the Supreme Court of the United States shall think proper, from time to time, by rule, to prescribe to any Circuit or District Court concerning the same."

Judge Iredell, in commenting upon these statutes, says:

* * * * * * *

"That as an exception from the general principle of a reference to the State laws in cases not specially provided for by their own, they have given a certain authority to their courts in regard to the form and method of proceeding, which authority when exercised pursuant to the power given, is also equally binding as if the regulations accordingly made by the courts had been a specific part of the court system established by the legislative authority itself."

Next, I reproduce, for convenience, the decision of this Court in the case of the United States against Lane, in full.—(8th Wallace, p. 185.)

Mr. Justice DAVIS delivered the opinion of the Court, as follows:

"The object of this suit is to recover damages against the United States for an alleged breach of contract, made by the appellee, in December, 1864, with one Risley, who was at the time the treasury agent at Norfolk, Virginia, for the purchase of the products of insurrectionary States, the case, as stated in the Court of Claims, is substantially this: that Risley agreed to purchase, and Lane to sell and deliver within a reasonable time, at Norfolk, a large quantity of cotton, represented to be on the Chowan river, in North Carolina, for which payment was to be made at the rate of three-fourths the sum per pound that similar grades of cotton were worth in New York on the day of its delivery in Norfolk. In order to carry out this agreement Lane, alleging himself to be a resident of Baltimore, and a loyal citizen of the United States, purchased a steamer at the cost of eighteen thousand dollars, and, having obtained a military safe-conduct for himself, vessel, and crew to bring out the cotton, proceeded to Chowan river, where he purchased and procured a valuable cargo of cotton, which he would have delivered in seasonable time at Norfolk, if the naval authorities of the United States had not forcibly seized and detained it. In course of time the property was released and restored to Lane; but he suffered a heavy loss in conseqence of this detention, as cotton had declined in value, and when sold did not bring the price he could have got for it if he had been permitted to deliver it at Norfolk.

"The United States are asked to make good this loss, caused, as is charged, by the wrongful conduct of its naval officers.

"It appears by the findings of the Court of Claims that Chowan river, in North Carolina, the place where the cotton was purchased, was within the lines held by the insurrectionary forces, and that the military safe-conduct protected as well the return as the outward voyage, for Lane was permitted to take out an outward cargo, under the supervision of a person, styled in the record a sub-agent of the purchasing agent at Norfolk, whose duty it was to retain possession of the cargo until he should have received from Lane on board the vessel, three times its value in cotton.

"In the view we take of this case it is unnecessary to discuss the question—conceding the contract to be lawful—whether the action of the naval authorities could be a ground of claim for damages for a breach of this contract against the United States, because, in our opinion, the contract was unauthorized, and had no power to bind the Government.

"At the time this contract purports to have been made, this country was engaged in war with a formidable enemy, and by a universally recognized principle of public law, commercial intercourse between States at war with each other, is interdicted. It needs no special declaration on the part of the sovereign to accomplish this result, for it follows from the very nature of war that trading between the belligerents should cease. If commercial intercourse were allowable, it would oftentimes be used as a color for intercourse of an entirely different character; and in such a case the mischievous consequences that would ensue can be readily foreseen. But the rigidity of this rule can be relaxed by the sovereign, and the laws of war so far suspended, as to permit trade with the enemy. Each State settles for itself its own policy, and determines whether its true interests are better promoted by granting or withholding licenses to trade with the enemy. It being the rule, therefore, that business intercourse with the enemy is unlawful unless directly sanctioned, the inquiry arises, whether there was any law of Congress in force at the time that sanctioned this transaction.

"At an early period in the history of the war Congress legislated on this subject. By an act passed the 13th of July 1861, all commercial intercourse between citizens of States in insurrection and citizens of the rest of the United States was declared unlawful; but liberty was given to the President, in his discretion, to license trade with the enemy if he thought it would conduce to the public interests to do so. In so far, however, as it was licensed by him, the manner of conducting it was left to be regulated by the Secretary of the Treasury. In the administration of this law, we do not find any regulation prescribed by the Secretary of the Treasury allowing commercial intercourse within the rebel lines. On the contrary, the trade regulations which were issued by him on the 31st of March; 1863, and the 12th of September of the same year, expressly say that commercial intercourse with those parts of those insurrectionary States within the control of the rebels is absolutely forbidden. Has this policy since then been changed? It certainly has, if this proceeding was authorized; for if Risley, in his capacity of treasury agent, could lawfully contract with Lane, a citizen of a State not in rebellion, to purchase from him cotton in the country of the public enemy, which he did not own or control, but must procure after he got there, and had the power to assist him in this enterprise, by allowing him to take out a cargo of goods to facilitate the purchase of the cotton, and to furnish for his protection a sub-agent and a military safe-conduct, then it is clear the door was left open for general trading with the enemy. If one citizen of a State, not in insurrection, could lawfully obtain from a treasury agent the right to transport goods to a place under the control of the insurgents, where he could exchange them for cotton or other products of the country, and could also have safe conduct to take his property there, and to bring out the property he should buy, with the promise on the part of the agent to protect and purchase it, so could any other citizen—for in this matter equality must be the rule—and in this way it is easy to see a free commercial intercourse with the enemy would be opened, and a radical change effected in the manner of conducting the war. Was this result contemplated by Congress in the act of July 2, 1864?

"It is contended that the eighth section of this act, which says that it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, conferred the power to license trading within the military lines of the enemy.

"If this were so, and it was the intention of Congress to allow this trading, providing it was done on Government account, why was it not manifested by a specific provision in the law? Why leave such an important change of policy to be inferred from the general words of the act, and the absence of express words of limitation?

"That the Secretary of the Treasury, who, it is natural to suppose, having the administration of the law in his hands, was, before it was passed, consulted about it, did not give this interpretation to it, is very clear, for, within a short time after the passage of the act, he adopted, with the approval of the President, a new series of rules regulating commercial intercourse, which were intended to supersede all others, and the third rule absolutely prohibits all intercourse beyond our military lines, and declares further 'that no permit will be granted for the transportation of any property to any place under the control of the insurgents.'—(See Treasury Regulations, and rules for commercial intercourse, of July 29, 1864.)

"It is argued, as the regulations which were issued on the 24th of September following, for the express purpose of enforcing that provision of the act relating to the purchase for the United States of the products of insurrectionary States, do not, in terms, re-adopt this prohibition against non-intercourse, that, therefore, it was abandoned. But this does not follow, for there is nothing in these regulations inconsistent with its continuance, and if not expressly revoked, it remained in force. Aside, however, from the construction adopted by the Secretary of the Treasury, we are able to see, by reference to other provisions of the same act, that Congress did not mean to change, by the eighth section, the non-intercourse policy, which had prevailed. By the fourth section of this act the prohibitions of the act of July 13, 1861, were extended *even* to commercial intercourse by and between persons residing or being within the lines of national military occupation in districts declared in insurrection 'with each other;' and the ninth section repeals so much of the act of July, 1861, as made it lawful for the President to license and permit trade by private citizens, in such districts, even within the Federal lines, except to supply the actual wants of the loyal people, and to authorize persons within the Federal lines to bring to the loyal States the products of their own labor, or of freedmen, &c.

"The incorporation of these sections in the law is irreconcileable with the idea that Congress intended, notwithstanding these prohibitions, to confer power on the Secretary of the Treasury to allow citizens of loyal States on Government account to trade within the actual military lines of the insurgents. If this is not the nature of the power conferred, it is asked what authority did Congress intend to give the Secretary, and how was it to be exercised? There is no difficulty in answering these questions and reaching the true meaning of this particular provision, when we consider the entire act, and the Treasury regulations adopted to carry into effect the eighth section, in connection with the history of the times. The law was designed to remedy existing evils. The mischiefs attending private trading with the enemy, even in those parts of the insurrectionary districts which were for the time within our military lines, had been seriously felt in the conduct of the war, and the best interests of the country required that it should cease. It was deemed important, however, to still maintain some species of commercial intercourse with the insurgents, for it is well known that the Government desired to have, if it did not interfere with military operations, the products of the South, and particularly cotton, brought within our lines. To accomplish this end, and at the same time avoid the complications and embarrassments incidental to private trading, required the inauguration of a new system. This was done by withdrawing from the citizen the privilege of trading with the enemy, and allowing the Secretary of the Treasury, with the approval of the President, to purchase through agents, for the United States, any products of States declared in insurrection. The inquiry is made, How could these agents purchase these products if private citizens were denied the right of trading in the insurrectionary districts, whether they happened to be within the National or Confederate military lines? It would not do to let the army be used for this purpose, and the only other way left open was to hold out inducements for the insurgents themselves to bring their products to us.

"If they could be induced to do this, we would obtain their products which we needed, and in the manner of obtaining them would avoid the evils inseparable from private trading. The inducements for the insurgents to pursue this course were very strong, for besides the liability of having their principal product—cotton—confiscated or destroyed, they were, as is well known, in want of many of the necessaries of life. They were substantially told in the regulations of the Treasury Department, 'If you will bring your cotton within our lines, we will not only not seize it, but will buy it from you, and you are at liberty to go to the nearest Treasury agent in an insurrectionary district to sell it, or if you prefer, you can leave it under the control of some one who can go to the agent and sell it for you.' If this were not enough to accomplish the object, the President of the United States, by way of further inducement, in an Executive order of the same date with the Treasury regulations, said to them: 'You can purchase such articles of merchandise as you need, not contraband of war, to one-third of the aggregate value of the products sold by you, and return with them, and I will guarantee you safe conduct.' Why this limited permission to buy, after the delivery of the products, unless the privilege was for the benefit of the insurgents? If private persons, living in the loyal States, could engage in a venture like this of the claimant, they would need, as he did, to make the venture remunerative, to take with them a cargo of goods to exchange for Southern products; but there was no authority for this. The permission of the President is limited to the taking of a return cargo, bought with part of the proceeds of Southern products, previously sold and delivered to a purchasing agent of the Treasury Department. Indeed, so particular is the direction on this subject, that the military officer commanding at the place of sale was not authorized to permit a person who had sold Southern products to buy merchandise, unless he exhibited to him a certificate of the purchasing agent, setting forth the fact of the purchase and sale, the character and quantity of products, and the aggregate amount paid therefor.

"Enough has been said, without pursuing this investgation further, to show there is nothing in the act itself, the regulations of the Treasury Department, or the order of the President, to justify Risley in dealing, in the manner he did, with Lane. It follows, therefore, that the voyage itself was illegal, as were the contracts and arrangements by which it was undertaken, and that the vessel and cargo were properly seized for being engaged in illegal trading with the enemy.

"Although Risley was not authorized in making any contract with a person occupying the status of Lane, still, if he were, he could only do it in the manner and for the purposes pointed out in the treasury regulations.

"By these regulations the purchasing agent could not act at all until the person desiring to sell southern products made application, in writing, that he owned or controlled them, stating their kind, quality, and location, and then the power of the purchasing agent before the delivery of the products was limited to a stipulation (the form is prescribed) to purchase, and to the giving a certificate that such application was made, and requesting safe-conduct for the party and his property.

"There is nothing in the petition, or the findings of the court below, to show that Lane complied with these provisions. On the contrary, it is clear from his own statement that he neither owned nor controlled the cotton when he contracted to sell it, but that, after the contract was made, he procured it within the rebel lines. Neither the law, nor the regulations through which it was administered, were intended to protect a speculation of this sort. The purchasing agent had no authority to negotiate even with any one in relation to the purchase of southern products, unless at the time of the negotiation he either owned or controlled them.—(See regulations for the purchase of products of insurrectionary States on government account, of September 24, 1864, and executive order same date.)

"The Court of Claims find that no proceedings were taken against the cotton, and that it was restored to the claimant, but that the vessel was libeled at the instance of the United States, in the Supreme Court of the District of Columbia, where a decree, with costs, passed in favor of the claimant. It is argued, and so ruled by the court below, that this decree concludes the United States. But the inquiry arises, how far the United States are concluded by it? The record of the admiralty court is not before us, and we only know from the record in this case, that that court refused to render a decree of forfeiture against the vessel, and awarded costs against the United States.

"On what ground the court put its decision—whether for want of proof, insufficient allegations, or on the merits of the case—we have no means of determining.

"It may well be that the United States could not reseize the vessel, or take further proceedings against the cotton, and yet, at perfect liberty to litigate the right of the claimant to damages, in a direct proceeding brought against them to test that question.

"There is nothing in this record to show that the Supreme Court of this District, in decreeing to the claimant the restoration of his vessel, adjudicated on the question of his right to damages. As that court had the power to award damages—and the record is silent on the subject—it is clear either that the court refused damages, or that the claimant did not insist on the court considering the question.

"The United States are, therefore, not concluded on this point, and the case is relieved of all difficulty.

"The judgment of the Court of Claims is reversed, and this cause is remanded to that court, with directions to enter an order dismissing the petition."

I believe that I have now put before the Court all the elements of decision known to me in this case.

[illegible] Hughes
Atty

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

JOSEPH H. MADDOX, BENJAMIN F. CAMP,
D. PRESTON PARR, *Appellants*,
vs.
THE UNITED STATES.
No. 179.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

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"On what ground the court put its decision—whether for want of proof, insufficient allegations, or on the merits of the case—we have no means of determining.

"It may well be that the United States could not re-seize the vessel, or take further proceedings against the cotton, and yet, at perfect liberty to litigate the right of the claimant to damages, in a direct proceeding brought against them to test that question.

"There is nothing in this record to show that the Supreme Court of this District, in decreeing to the claimant the restoration of his vessel, adjudicated on the question of his right to damages. As that court had the power to award damages—and the record is silent on the subject—it is clear either that the court refused damages, or that the claimant did not insist on the court considering the question.

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Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

This was a suit brought by the appellants, in the Court of Claims, to recover from the United States the sum of $735,644, with interest thereon from March 5, 1865, as damages for an alleged breach of contract for the purchase of products of States declared in insurrection.

The amended petition sets forth that on the 13th of November, 1864, an arrangement was entered into with the petitioners by a duly authorized agent of the United States, for the purchase from them, on behalf of the Government, of a certain quantity of tobacco which it was understood and expected that they would purchase in or about the city of Richmond, Va., and that thereupon the said agent executed and delivered to the petitioners an instrument, of which the following is a copy:

"Memorandum of agreement made November 13, 1864, between H. A. Risley, agent authorized to purchase for the United States products of States declared in insurrection, of one part, and Benjamin F. Camp, J. H. Maddox, and D. P. Parr, of the other part:

"That said Camp, Maddox, and Parr agree to sell to said Risley, agent as aforesaid, and to deliver to him at Norfolk or New York, 6,000 boxes of tobacco, 340 barrels of turpentine, and 700 barrels of rosin, to be transported by the way of the Cone and Potomac rivers, and the said Risley, agent as aforesaid, agrees to purchase the same on the following terms and conditions:

"The said products to be sold in New York or Baltimore, by or under the direction of said Risley, under the same conditions as other sales of like public property are made; all expenses, costs, and charges connected with the purchase, storage, transportation, and sale of the same, together with the internal revenue tax and permit fees prescribed by regulations to be first paid, and the net proceeds, over and above such expenses, costs, charges, taxes, and fees, to be disposed of as follows: one-fourth part thereof to be retained by the United States, and three-fourths to be paid to the said Camp, Maddox, and Parr, or their legal representatives.

"And it is further agreed between the parties, that all products transported under this contract shall be consigned to said Risley, agent as aforesaid, and shipped on a Government transport, or, if not so shipped, shall be in immediate charge of an agent to be appointed by said Risley, whose compensation and expenses shall be paid by said Camp, Maddox, and Parr.

"Nothing in this contract contained shall be construed as incurring any liability on behalf of the United States.

"H. A. RISLEY,
"*Supervising special agent, Treasury Department,*
"*Authorized to purchase products, &c.*
"BENJ. F. CAMP."

The said agent also delivered to the petitioners another writing, which reads as follows:

"NOVEMBER 13, 1864.

"I, Hanson A. Risley, agent for the purchase of products of insurrectionary States, on behalf of the Government of the United States, at Norfolk, Virginia, do hereby certify that I have agreed to purchase from B. F. Camp, J. H. Maddox, and D. P. Parr, 6,000 boxes of tobacco, 340 barrels of turpentine, and 700 barrels of rosin, situated in the States of Virginia and North Carolina, which products, it is represented, are or will be at points on or within the national military lines in said State, on or before the first day of March, 1865, and which he stipulates shall be delivered to me, unless he is prevented from so doing by the authority of the United States.

"I, therefore, request safe conduct for the said Camp, Maddox, and Parr, their agents, and means of transportation, and said products forwarded by way of the Cone and Potomac rivers, within the lines of military occupation by the United States forces, in said States of Virginia and North Carolina, (without violating blockade,) to Norfolk, Virginia, where the products so transported are to be sold and delivered to me under the stipulation referred to above, and pursuant to regulations prescribed by the Secretary of the Treasury.

"H A. RISLEY,
"*Sup. special agent, Treasury Department,*
"*Authorized to purchase products, &c.*"

This writing was afterwards endorsed by the President as follows:

"EXECUTIVE MANSION,
"*November* 17, 1864.

"An authorized agent of the Treasury Department having, with the approval of the Secretary of the

Treasury, contracted for the products above mentioned, and the parties having agreed to sell and deliver the same to such agent:

"It is ordered, that products moving in compliance with and for fulfilment of said contract, and being transported to said agent or under his direction, shall be free from seizure or detention by any officer of the Government; and commandants of military departments, districts, posts, and detachments, naval stations, gunboats, flotillas, and fleets, will observe this order, and give the said B. F. Camp, J. H. Maddox, and D. P. Parr, their agents and transports, free, unmolested passage, for the purpose of getting said products, or any part thereof, through the lines, and safe conduct within our lines, excepting blockaded line, while the same are moving within strict compliance with regulations of the Secretary of the Treasury, and for fulfilment of said contract with the agent of the Government.

"ABRAHAM LINCOLN."

The petition further sets forth that, for the purpose of fulfilling the said contract, the petitioners in January and February, 1865, purchased at Richmond, Va., 4,042 boxes of tobacco, which they caused to be delivered to them at that place; that a portion of this tobacco was afterwards burned and destroyed by the military forces of the United States, while the same was being transported from Richmond to Norfolk; that another portion was taken possession of by the military, and converted to the use of the United States; that another portion was destroyed by fire incident to the capture of Richmond; and the petitioners claim that, by reason of the premises, the United States became liable, as per breach of contract, to pay them the full value of the tobacco taken and destroyed as aforesaid.

The petition having been demurred to, the court below gave judgment sustaining the demurrer and dismissing the suit; from which the petitioners have taken an appeal to this court.

I.

This case is similar to that of United States *vs.* Lane, (8 Wall., 185,) in which it was held, after an able and exhaustive review of the statutory provisions and the Treasury regulations concerning the purchase of products of insurrectionary States, that a purchasing agent, acting in behalf of the United States, had no authority to negotiate with any one in relation to the purchase of such products, unless at the time of the negotiation the party either owned or controlled them—that neither was the law, nor were the regulations through which it was administered, designed to protect a speculation wherein the products contracted to be sold were to be procured by the contractor within the rebel lines *after the contract was made.* The petition shows that the appellants were not the owners of the tobacco in question at the time the contract was made, but that it was purchased by them within the rebel lines long afterwards. The contract was therefore void.

II.

But granting that the contract was valid, still the facts presented in the petition do not exhibit any ground of claim against the United States for a breach of that contract. Thus the petition does not allege, and the facts do not show, that the appellants were ready and willing, or were even in a condition, to perform fully the contract on their part—that is to say, to deliver the whole of the products contracted for. On the contrary, it merely alleges "that they were prevented from delivering 4,042 boxes of said tobacco to said Risley, under said contract, *and in part performance thereof*, by the conduct of said military forces of the United States." The contract made no provision for a part performance; and it is very clear that, unless the purchasing agent was bound by the terms of the agreement to accept a part performance, the prevention of the contractors from making such part performance would not amount to a breach.

If the claim had any foundation at all, it was the damage sustained by the appellants (not in consequence of any supposed breach of contract, but) in consequence of the action of the military authorities; and a claim of this character was not within the jurisdiction of the court. (See act of July 4, 1864, 13 Stat., 381.)

B. H. BRISTOW,
Solicitor General.